

ORDINANCE NO. 2001-064

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REMOVING COUNTY IMPOSITION OF TAXES AND FEES ON COMMUNICATIONS SERVICES PROVIDERS AS REQUIRED BY THE COMMUNICATIONS SERVICES TAX SIMPLIFICATION LAW; AMENDING THE PALM BEACH COUNTY PUBLIC SERVICE TAX ORDINANCE, PALM BEACH COUNTY CODE SECTIONS 17-222 THROUGH 17-228; AMENDING THE TELECOMMUNICATIONS RIGHT OF WAY ORDINANCE, PALM BEACH COUNTY CODE SECTIONS 23-152 THROUGH 23-154, AND 23-161 THROUGH 23-163; AMENDING THE PALM BEACH COUNTY CABLE ORDINANCE, PALM BEACH COUNTY CODE SECTIONS 8-4, 8-11, AND 8-14; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, chapter 2000-260, Laws of Florida, as amended by chapter 2001-140, Laws of Florida (hereinafter referred to as the "Communications Services Tax Simplification Law") restructures and consolidates all taxes and fees that may be imposed upon communications services providers; and

WHEREAS, the Communications Services Tax Simplification Law repeals all sources of local government authority to impose such taxes and fees effective October 1, 2001; and

WHEREAS, in order to remain consistent with applicable state law, Palm Beach County must amend the Palm Beach County Public Service Tax Ordinance, the Palm Beach County Cable Ordinance, and the Palm Beach County Telecommunications Right of Way Ordinance accordingly.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Part 1.

Public Service Tax Ordinance, Palm Beach County Code, Section 17-222, "Definitions," is hereby amended as follows:

Sec. 17-222. Definitions.

As used in this article:

(a) *Purchase* means every act or transaction whereby possession of, utilization of, control over or title to ~~telecommunications service~~; electricity; or metered or bottled gas (natural, liquefied

1 petroleum gas or manufactured) becomes vested in the purchaser within the unincorporated area of
2 the county for which payment is made pursuant to a duty and obligation therefor.

3 * * *

4 **Part 2.**

5 Public Service Tax Ordinance, Palm Beach County Code, Section 17-223, "Levy of tax." is
6 hereby amended as follows:

7 **Sec. 17-223. Levy of tax.**

8 ~~—— (a) Telecommunications service. There is hereby levied by the county on each and every~~
9 ~~purchase within the unincorporated area of the county of taxable telecommunications services as~~
10 ~~defined in section 203.012(5)(a) and (b), Florida Statutes (1987), which originates and terminates~~
11 ~~in this state a tax of seven (7) percent of the total amount charged for any telecommunications~~
12 ~~service provided within the unincorporated area of the county or, if the location of the~~
13 ~~telecommunications service provided cannot be determined as part of a billing process, the total~~
14 ~~amount billed for such telecommunications service to a telephone or telephone number, a~~
15 ~~telecommunications number or device, a service address, or a customer's billing address located~~
16 ~~within the unincorporated area of the county, excluding public telephone charges collected on-site,~~
17 ~~charges for any foreign exchange service or any private line service except when such services are~~
18 ~~used or sold as a substitute for any telephone company switched service or dedicated facility by~~
19 ~~which a telephone company provides a communication path, access charges and any customer access~~
20 ~~line charges paid to a local telephone company. Purchases of telecommunications services as~~
21 ~~defined in section 203.012(5)(b), Florida Statutes, shall be taxed only on the monthly recurring~~
22 ~~customer service charges excluding variable usage charges.~~

23 ~~—— (b) Other utilities.~~

24 ~~—— (1) From October 1, 1989, to September 30, 1990, there is hereby levied by the county~~
25 ~~on each and every purchase within the unincorporated area of the county of electricity~~
26 ~~or metered or bottled gas (natural, liquefied petroleum gas or manufactured) a tax at~~
27 ~~a rate of eight and one-half (8.5) percent of the first four thousand dollars (\$4,000.00)~~
28 ~~purchased by a purchaser during a monthly period, a rate of two (2) percent of the~~
29 ~~next two thousand dollars (\$2,000.00) purchased by a purchaser during a monthly~~

1 period, and a rate of one (1) percent of any amount in excess of six thousand dollars
2 (\$6,000.00) purchased by a purchaser during a monthly period.

3 ~~(2) From October 1, 1990, to September 30, 1991, there is hereby levied by the county~~
4 ~~on each and every purchase within the unincorporated area of the county of electricity~~
5 ~~or metered or bottled as (natural, liquefied petroleum gas or manufactured) a tax at~~
6 ~~a rate of nine (9) percent of the first four thousand dollars (\$4,000.00) purchased by~~
7 ~~a purchaser during a monthly period, a rate of two (2) percent of the next two~~
8 ~~thousand dollars (\$2,000.00) purchased by a purchaser during a monthly period, and~~
9 ~~a rate of one (1) percent of any amount in excess of six thousand dollars (\$6,000.00)~~
10 ~~purchased by a purchaser during a monthly period.~~

11 ~~(3a) From October 1, 1991, and continuing unless changed by amendment to this article,~~
12 ~~t~~There is hereby levied by the county on each and every purchase within the unincorporated area of
13 the county of electricity or metered or bottled gas (natural, liquefied petroleum gas or manufactured)
14 a tax at a rate of ten (10) percent of the first four thousand dollars (\$4,000.00) purchased by a
15 purchaser during a monthly period, a rate of two (2) percent of the next two thousand dollars
16 (\$2,000.00) purchased by a purchaser during a monthly period, and a rate of one (1) percent of any
17 amount in excess of six thousand dollars (\$6,000.00) purchased by a purchaser during a monthly
18 period.

19 The monthly period referenced to in this section is the monthly billing cycle of a seller. If
20 a seller bills in any manner other than on a monthly basis, the tax rate for all sales shall be eight and
21 one-half (8.5) percent from October 1, 1989, to September 30, 1990; nine (9) percent from October
22 1, 1990, to September 30, 1991; and ten (10) percent from October 1, 1991, and continuing unless
23 changed by amendment to this article. The tax shall not be applied against any fuel adjustment
24 charge, and such charge shall be separately stated on each bill. The term "fuel adjustment charge"
25 means all increases in the cost of utility services to the ultimate consumer resulting from an increase
26 in the cost of fuel to the utility subsequent to October 1, 1973.

1 **Part 3.**

2 Public Service Tax Ordinance, Palm Beach County Code, Section 17-224, "Date of
3 application," is hereby amended as follows:

4 **Sec. 17-224. Date of application.**

5 The tax levied hereby shall apply to all purchases of electricity or metered or bottled gas
6 occurring on or after October 1, 1989. ~~The tax on telecommunications services shall apply to all~~
7 ~~taxable service provided as of one hundred twenty (120) days from the effective date of this article~~
8 ~~[July 31, 1989].~~

9 **Part 4.**

10 Public Service Tax Ordinance, Palm Beach County Code, Section 17-225, "Duty of seller
11 as to collection of tax; liability for failure to collect," is hereby amended as follows:

12 **Sec. 17-225. Duty of seller as to collection of tax; liability for failure to collect.**

13 (a) It shall be the duty of every seller of ~~telecommunications services~~, electricity, or metered
14 or bottled gas (natural, liquefied petroleum gas or manufactured) within the unincorporated area of
15 the county to collect from the purchaser thereof for the use of the county the taxes hereby levied at
16 the time of collecting the selling price charged for each and every transaction and, ~~except for~~
17 ~~remittance of taxes by sellers of telecommunications services~~, to report and pay over on or before
18 the fifteenth day of each calendar month to the county clerk all such taxes levied and collected during
19 the preceding calendar month. ~~The seller of telecommunications services which are subject to the~~
20 ~~tax imposed under this ordinance shall file a return with the county clerk each month.~~ The form of
21 the return shall be determined by the seller, and the return shall be deemed sufficient if it identifies
22 the name and address of the seller, the period of the return, the amount collected from the sale of
23 taxable services, any collection allowance taken, the amount of tax remitted with the return, and the
24 name and telephone number of a person authorized by the seller to respond to inquiries from the
25 county concerning the seller's administration of the tax. ~~The payment of tax shall be on the~~
26 ~~twentieth day of the month.~~ In the event the total amount of tax anticipated to be collected for the
27 ~~sale of telecommunications services within a calendar quarter does not exceed one hundred twenty~~
28 ~~dollars (\$120.00), the seller of such service may, with the written authorization of the county, remit~~
29 ~~the taxes collected during such calendar quarter to the county quarterly. In such case, the tax shall~~

1 be due on the twentieth day of the month following the end of the calendar quarter in which the taxes
2 were collected.

3 (b) It shall be unlawful for any seller to collect the price of any purchase of
4 ~~telecommunications services~~; electricity; or metered or bottled gas (natural, liquefied petroleum gas
5 or manufactured) sold within the unincorporated area of the county without at the same time
6 collecting such tax hereby levied in respect to such purchase or purchases unless such seller shall
7 elect to assume and pay such tax without collecting the same from the purchaser or consumer;
8 however, the seller shall not be liable for the payment of such tax upon uncollected bills.

9 (c) Any seller failing to collect such tax at the time of collecting the price of any purchase
10 and sale, as aforesaid, where the seller has not elected to assume and pay such tax shall be liable to
11 the county for the amount of such tax in like manner as if the same had actually been paid to the
12 seller; and the county shall bring and cause to be brought all such suits and actions and take such
13 proceedings as may be necessary for the recovery of such tax.

14 ~~(d) For the purpose of compensating the seller of telecommunications services, the seller of~~
15 ~~the telecommunications services shall be allowed one (1) percent of the amount of the tax collected~~
16 ~~in the form of a deduction from the amount collected for remittance. The deduction shall be allowed~~
17 ~~as compensation for keeping records and for collecting and remitting the tax.~~

18 * * *

19 **Part 5.**

20 Public Service Tax Ordinance, Palm Beach County Code, Section 17-226, "Records to be
21 kept by seller; inspection of records; transcripts; provision of street name; and block numbers at
22 unincorporated boundaries," is hereby amended as follows:

23 **Sec. 17-226. Records to be kept by seller; inspection of records; transcripts; provision of**
24 **street name; and block numbers at unincorporated boundaries.**

25 (a) Each and every seller of ~~telecommunications services~~; electricity; or metered or bottled
26 gas (natural, liquefied petroleum gas or manufactured) within the unincorporated area of the county,
27 with respect to sales and purchases, on which the tax is hereby levied, shall keep full and complete
28 records showing all purchases and sales of such ~~telecommunications services~~; electricity; or metered
29 or bottled gas (natural, liquefied petroleum gas or manufactured) within the unincorporated area of

1 the county, which records shall show the price charged upon each sale and purchase, the date and
2 period of time covered thereby, and the date of payment thereof.

3 * * *

4 **Part 6.**

5 Public Service Tax Ordinance, Palm Beach County Code, Section 17-227, "Seller made
6 collecting agent for tax; certification of correctness of billings; transmissions of certification," is
7 hereby amended as follows:

8 **Sec. 17-227. Seller made collecting agent for tax; certification of correctness of billings;**
9 **transmissions of certification.**

10 (a) The sellers of ~~telecommunications services~~, electricity; or metered or bottled gas (natural,
11 liquefied petroleum gas or manufactured) within the unincorporated area of the county shall act as
12 the collection medium and collecting agency for the collection from the purchaser of the tax levied
13 in this article for the use of the county. The county may bring such legal action as in its discretion
14 may appear advisable under the terms of this section.

15 (b) The sellers of ~~telecommunications services~~, electricity; or metered or bottled gas (natural,
16 liquefied petroleum gas or manufactured) within the unincorporated area of the county shall furnish
17 to the county a certification duly executed by one of the officials of the company certifying as to the
18 accuracy and correctness of billing and collections required under the terms of this section, which
19 certification shall accompany the remittance of such tax collected or paid for the preceding month.

20 **Part 7.**

21 Public Service Tax Ordinance, Palm Beach County Code, Section 17-228, "Exemptions,"
22 is hereby amended as follows:

23 **Sec. 17-228. Exemptions.**

24 (a) The following purchasers are declared to be exempt from the tax imposed hereby: the
25 purchase of any taxable item by the United States government, the state, all counties, school districts,
26 municipalities of the state, or any other public body as defined in Florida Statutes, § 1.01, Florida
27 Statutes; the purchase of any taxable item by any recognized church within the state for use
28 exclusively for church purposes; ~~telecommunications purchases made by any religious institution~~
29 ~~that possesses a consumer certificate of exemption issued under Florida Statutes, Chapter 212; and~~

1 the purchase of gas (natural, liquefied petroleum gas or manufactured) by a public or private utility,
2 either for resale or for use as fuel in the generation of electricity; ~~and the purchase of local telephone~~
3 ~~service or other telecommunications service for use in the conduct of a telecommunications service~~
4 ~~for hire or otherwise for resale.~~

5 (b) Residential users of electricity are exempted from the tax imposed by this article in an
6 amount up to and including the first two hundred (200) kilowatt hours of electricity purchased per
7 month for residential use. Such exemption shall apply to each separate residential unit, regardless
8 of whether such unit is on a separate meter or a central meter, and shall be passed on to each
9 individual tenant.

10 (c) A purchaser who claims an exemption under this section shall certify to the seller that he
11 or she qualifies for the exemption, which certification may encompass all purchases after a specified
12 date or other multiple purchases. ~~For purchases of local telephone service or other~~
13 ~~telecommunications service for use in the conduct of a telecommunications service for hire or~~
14 ~~otherwise for resale, which is exempt, upon the presentation of a certificate, from the tax imposed~~
15 ~~by Chapter 212, the certification required by this subsection may be satisfied by presentation of a~~
16 ~~certificate that satisfies the requirements of Chapter 212, Florida Statutes.~~ A seller accepting the
17 certification required by this subsection is relieved of the obligation to collect and remit tax;
18 however, a governmental body that is exempt from the tax shall not be required to furnish such
19 certification and a seller is not required to collect tax from such an exempt governmental body.

20 * * *

21 **Part 8.**

22 Telecommunications Right of Way Ordinance, Palm Beach County Code, Section 23-
23 152, "Purpose," is hereby amended as follows:

24 **Sec. 23-152. Purpose.**

25 The purpose of this article is:

- 26 (1) To establish a competitively neutral policy for the use of the public right-of-way
27 for the provision of local exchange telecommunications services and toll
28 telephone telecommunications services;

(2) To protect the county's investment in the public right-of-way by providing for the payment of non-discriminatory fees for the use of the right-of-way by telecommunications providers and manage and receive reasonable compensation for access to and use of public right-of-way by telecommunications providers to ensure and protect the public health, safety and welfare;

(3) To regulate the placement of structures and facilities in the public right-of-way pursuant to Florida Statutes, § 125.01;

(4) To prescribe reasonable rules for such uses pursuant to Florida Statutes, §§ 337.401 and 364.0361, so as to minimize disruption of services in the public right-of-way, regulate the use of the public right-of-way by telecommunications providers, and regulate the construction, installation, maintenance, repair, removal and replacement of facilities in the public right-of-way.

* * *

Part 9.

Telecommunications Right of Way Ordinance, Palm Beach County Code, Section 23-153, "Definitions," is hereby amended as follows:

Telecommunications provider or provider shall mean any person or entity that provides telecommunications service as defined in Florida Statutes section 203.012(5), as may be amended ~~local telephone service (hereinafter referred to as “local service provider”) as defined in Florida Statutes, section 201.012(3), as may be amended (“local service”), or any person or entity that provides toll telephone service (hereinafter referred to as a “toll service provider”) as defined in Florida Statutes, section 203.012(7), as may be amended (“toll service”).~~

Part 10.

Telecommunications Right of Way Ordinance, Palm Beach County Code, Section 23-154, "Registration for use of right-of-way," is hereby amended as follows:

Sec. 23-154. Registration for use of right-of-way.

(a) Each telecommunications provider that desires to erect, construct, install, maintain, repair, expand, or use any telecommunications facilities in, under, over or across any public right-of-way in the county shall first register with the county in accordance with the terms of this

1 article. As to toll service providers, such registration shall be accepted by the county as an
2 ordinance of the board of county commissioners.

3 (b) Subject to the terms and conditions contained in this article, a registrant may erect,
4 construct, install, repair, maintain, expand and use the telecommunications system in, on, over,
5 under, and across the designated public right-of-way.

6 ~~—— (c) Registrants that are local service providers shall pay a fee payable quarterly in an~~
7 ~~amount equal to one(1) percent of the gross receipts on recurring local service revenues provided~~
8 ~~in the unincorporated area of the county as set forth in section 23-161 of this article.~~

9 ~~—— (d) Registrants that are toll service providers shall pay a fee payable annually in an~~
10 ~~amount equal to five hundred dollars (\$500) per linear mile of any cable, fiber optic, or other~~
11 ~~pathway that makes physical use of the public right-of-way as set forth in section 23-161 of this~~
12 ~~article.~~

13 * * *

14 **Part 11.**

15 Telecommunications Right of Way Ordinance, Palm Beach County Code, Section 23-
16 161, "Compensation to county," is hereby deleted in its entirety.

17 **Part 12.**

18 Telecommunications Right of Way Ordinance, Palm Beach County Code, Section 23-
19 162, "Construction in the right-of-way," is hereby deleted in its entirety.

20 **Part 13.**

21 Telecommunications Right of Way Ordinance, Palm Beach County Code, Section 23-
22 163, "Insurance and indemnification," is hereby deleted in its entirety.

23 **Part 14.**

24 Cable Ordinance, Palm Beach County Code, Section 8-4, "Definitions," is hereby
25 amended as follows:

26 * * *

27 ~~—— *Franchise fee.* The charge based on the annual gross revenues of the cable operator~~
28 ~~levied pursuant to this chapter in accordance with federal law. It does not include:~~

29 ~~—— a. Any tax, fee or assessment of general applicability;~~

- ~~b. Fees for capital costs associated with education or government access facilities and equipment; or~~
- ~~c. Any other fees or charges imposed on a cable operator which are not based solely on the status of the cable operator.~~

Franchising authority. Any governmental entity empowered by federal, state, or local law to grant a franchise or license in accordance with this chapter.

~~*Gross revenues.* All revenues derived directly or indirectly by the cable operator, from or in direct or indirect connection with the provision of cable services pursuant to this chapter.~~

~~Gross revenues shall include but not be limited to monthly fees charged subscribers for any cable service, including but not limited to, basic, optional, premier, per-channel, or per-program service; installation, disconnection, reconnecting, or change of service fees; wiring fees; leased channel fees; revenues from programmers for carriage of programming on the cable system; revenues from rental or sales of converters or other equipment; local advertising revenues; revenues from program guides; revenues from home shopping channels and revenues from internet access and high speed data access. This provision shall be read broadly to prevent the avoidance of franchise fees by a cable operator through arrangements with affiliates. Gross revenues shall not include any taxes on services furnished by the cable operator which are imposed directly on any subscriber or user by the state, or other governmental unit and which are collected by the cable operator on behalf of said governmental unit.~~

* * *

Part 15.

Cable Ordinance, Palm Beach County Code, Section 8-11, "Fees and costs," is hereby deleted in its entirety.

Part 16.

Cable Ordinance, Palm Beach County Code, Section 8-14, "Books and records; audit," is hereby deleted in its entirety.

Part 17.

The amendments to the Palm Beach County Public Service Tax Ordinance, the Palm Beach County Cable Ordinance, and the Palm Beach County Telecommunications Right of Way Ordinance as set forth herein shall take effect October 1, 2001.

1 **Part 18. REPEAL OF LAWS IN CONFLICT.**

2 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
3 repealed to the extent of such conflict.

4 **Part 19. SEVERABILITY.**

5 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
6 reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect
7 the remainder of this Ordinance.

8 **Part 20. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

9 The provisions of this Ordinance shall become and be made a part of the Code of Laws
10 and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be
11 renumbered or relettered to accomplish such, and the word "ordinance" may be changed to
12 "section," "article," or other appropriate word.

13 **Part 21. EFFECTIVE DATE.**

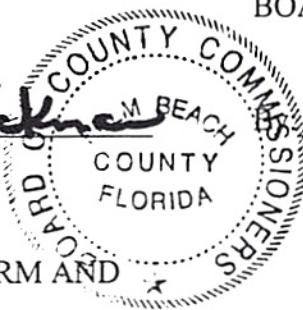
14 The provisions of this Ordinance shall become effective upon filing with the Department
15 of State.

16
17 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
18 County, Florida, on this the 11 day of September, 2001.

19 DOROTHY H. WILKES, CLERK

20 PALM BEACH COUNTY, FLORIDA, BY ITS
21 BOARD OF COUNTY COMMISSIONERS

22 By: Dorothy H. Wilkes
23 Deputy Clerk



W. J. Wilken
Chairman

24 APPROVED AS TO FORM AND
25 LEGAL SUFFICIENCY

26 By: Scott B. Brown
27 County Attorney

28 EFFECTIVE DATE: Filed with the Department of State on the 19th day of September,
29 2001.

30 G:\COMMON\ATTY\WPDATA\LANDUSE\ELBERGER\TELECOM\taxamc\lfrankc.mxd
11 STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on September 11, 2001.
DATED at West Palm Beach, FL on 10/3/01.
DOROTHY H. WILKEN, Clerk
By: W. J. Wilken D.C.